

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.2369 OF 2004

Anil Dattu Pawar,

Age: 21 years, r/o Sudarshan

Colony, Navanath Nagar,

Panchavati, Nashik

(At present detained in

Nasik Road Central Prison,

Nasik).

.... Petitioner

- Versus -

1. Shri Himansu Roy,
Commissioner of Police,
Nashik.
2. The Addl. Chief Secretary
to the Government of
Maharashtra, Home Depart-
ment (Spl.), Mantralaya,
Mumbai.
3. The State of Maharashtra
(through the Secretary
to the Government of
Maharashtra, Home Depart-
ment (Spl.), Mantralaya,
Mumbai.

4. The Superintendent,
Nasik Road Central Prison,
Nashik. Respondents

Shri U.N. Tripathi for the Petitioner.
Shri D.S. Mhaispurkar, Addl. Public
Prosecutor, for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: MARCH 11, 2005

JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Perused the records. The petitioner/detenu seeks to challenge the order of detention dated 21-10-2004 issued under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981, hereinafter referred to as "the MPDA Act", passed by the respondent No.1.

2. The records reveal that on 13-2-2002 a complaint came to be lodged against the detenu and his associate by one Ashok Gunjal alleging assault with a knife resulting in injury to the complainant and C.R. No.I-28/2002 under Sections 307, 504 and 506 r/w Section

34 of the Indian Penal Code r/w Section 135 of the Bombay Police Act came to be registered at the Panchavati police station. However, the detenu was acquitted in the said case. On 29-1-2002 a complaint came to be registered by one Shripad Dattatray Joshi alleging assault by the detenu and his associate by name Vishal Vishnu Bhoir by throwing a brick resulting in injury to the complainant and consequently C.R. No.I-337/2002 under Sections 337 and 323 r/w Section 34 of the Indian Penal Code came to be registered at the Panchavati police station. The trial in relation to the said complaint is pending before the Court. On 26-8-2003 a complaint came to be lodged by one Suresh Hiralal Gupta alleging assault with fist blows by the detenu and his associates causing dislocation of tooth and also having intimidated the complainant by abuses and therefore C.R. No.I-319/2003 under Sections 325, 323, 504 and 506 r/w Section 34 of the Indian Penal Code came to be registered at the Panchavati police station. The trial in that regard is pending in the Court. Preventive action under Section 110 of the Code of Criminal Procedure was also taken against the detenu being Case No.9/2004. On 27-2-2004 a complaint came to be lodged by one Vittabai Vasant Jadhav alleging the detenu and his associates having assaulted the complainant with sticks, stumps and wooden handles and also having committed mischief by breaking the window

glasses of the complainant's house and consequently C.R. No.I-81/2004 under Sections 143, 147, 148, 323, 427, 504 and 506 of the Indian Penal Code r/w Section 135 of the Bombay Police Act came to be registered at the Panchavati police station. The trial in that regard is pending in the Court. On 26-6-2004 a complaint came to be lodged by one Shivaji Gangadhar Gavali against the detenu for having assaulted the complainant with sword causing injury on his face and consequently C.R. No.I-230/2004 under Sections 324, 504 and 506 of the Indian Penal Code r/w Section 135 of the Bombay Police Act came to be registered at the Panchavati police station. The investigation in that had been in progress. On 16-8-2004 the police station at Panchavati received an anonymous telephone call informing that the detenu was abusing and threatening people in the locality with a sword and particularly the shop keepers were being threatened for extortion of money and the police having rushed to the spot, the detenu ran away from the spot and the same was recorded in the said police station station diary entry Nos.68/2004 and 72/2004. On 18-8-2004 an anonymous complaint was received by the Panchavati police station complaining about the various activities of criminal nature like extortion of money, threats with knife, intimidation and assault by the detenu in the locality. On 13-9-2004 three in-camera statements of different persons - one

being of building contractor, another being of a labour contractor and the third being the eye-witness to the various activities of the criminal nature of the detenu came to be recorded. The respondent No.1 thereafter on 21-10-2004 passed the impugned order of detention and the same was executed on the very day and the detenu was taken into preventive custody. The detenu through his lawyer made a representation on 8-11-2004. The meeting of the Advisory Board was scheduled on 19-11-2004. The petitioner approached this Court with the present petition on 22-11-2004.

3. The first ground of challenge to the impugned order relates to failure on the part of the respondents to inform the detenu in Marathi language his right to make representation in terms of the provisions of Article 22(5) of the Constitution of India and, therefore, the impugned order being bad in law. While elaborating the said ground of challenge, the learned Advocate appearing for the petitioner submitted that the petitioner is a Maharashtrian person, born and brought up at Panchavati in Nasik District and his mother tongue is Marathi and he has been education upto VIIth standard in Marathi medium and is not well versed with English language. Though the Marathi translation of the grounds of detention and the other documents furnished to the petitioner, the Marathi version of the relevant portion

in relation to the right of the detenu to make representation is not correct and in fact the Marathi version does not inform the detenu about his right to make representation and therefore the petitioner had lost the earliest opportunity to make an effective representation which resulted in deprivation of exercise of the fundamental right enshrined in Article 22(5) of the Constitution and therefore applying the law laid down by the Apex Court in **Kamleshkumar Ishwardas Patel v. Union of India & Ors.**, reported in JT 1995 (3) SC 639, the order of detention is liable to be quashed. Further, the entitlement to get his right being informed to him being a fundamental right in terms of the provisions of law comprised under Article 22(5) of the Constitution of India, it was mandatory for the detaining authority to inform about the said right to the detenu in Marathi, the language known to the petitioner, and failure thereof has resulted in denying the petitioner to avail the earliest opportunity to make representation. Attention is also drawn to the decision of the Apex Court in the matter of **K. Mohanan v. State of Kerala**, reported in (2000) 10 SCC 222. The learned Advocate for the petitioner has also relied upon the decision of the Division Bench of this Court in the matter of **Ramchandra alias Ramyadada Gopinath Pawar v. R.H. Mendonca and others**, reported in 2000 Cri.L.J. 2114 and an unreported decision in the matter of **Smt.**

Leena Lawrence Lewis v. Shri M.N. Singh and others in Criminal Writ Petition No.1011 of 2002 delivered on 20-2-2003. The learned A.P.P., on the other hand, has submitted that the essence of Article 22(5) of the Constitution is that the detenu must get the earliest opportunity to make an effective representation against his detention and therefore he must be apprised of the availability of the said right to him and if availed, the authorities should consider such representation in accordance with the provisions of law, without any delay. Drawing attention to the contents of the translation of the grounds in Marathi in relation to such intimation to the detenu, it was contended on behalf of the respondents that the petitioner was duly apprised of his entitlement to make such a representation and in fact he made such representation and no prejudice was caused in any manner to the petitioner on account of the translation in Marathi of the grounds even assuming that it was not a verbatim translation of the grounds in English. Reliance is sought to be placed in the decisions in the matter of **Wasi Uddin Ahmed v. The District Magistrate, Aligarh, U.P. and others**, reported in 1981 Cri.L.J. 1825 and **Amar alias Amarsingh Gulabsingh Rathod v. State of Maharashtra & Anr.**, reported in 2003 All M.R. (Cri.) 1671 in support of the contention in that regard.

4. It is not in dispute that under para 7 of the grounds in English, it was informed to the detenu that he had a right to make representation to the detaining authority against the detention should he desire to make such a representation and he should address the same to the Commissioner of Police, Nasik at the given address therein. It is also not in dispute that under para 8 of the grounds in English, the detenu was informed that he had a right to make representation to the State Government against the detention and he should address the same to the Secretary of the Government of Maharashtra (Preventive Detention) at the address given therein. He was further informed under para 10 of the grounds that if so desired he could make representation to the Advisory Board against the detention and the same should be addressed to the Chairman of the Advisory Board and sent to the address mentioned therein. He was also informed that if so desired, he would be heard in person by the Advisory Board. The Marathi translation of the grounds for paras 7, 8 and 10 respectively also contained intimation to the detenu about his entitlement to make representation to the authority mentioned therein and at the address given thereunder. Undoubtedly, the literal translation of the English word "right" would be "adhikar" in Marathi. Undoubtedly, such a word is not incorporated as far as para No.8 is concerned i.e. in relation to the representation to the

State Government. Nevertheless, the translation clearly speaks of availability of opportunity to make the representation to the State Government against the detention and discloses the designation and the address of the authority to whom such representation was required to be sent. The grievance which is sought to be made by the petitioner pertains to the absence of the literal translation of the word "right" in para 8 of the grounds which related to the intimation regarding the entitlement of the detenu to make a representation.

5. The Apex Court in **Kamleshkumar Patel's** case (supra), while dealing with the right of the detenu under Article 22(5) of the Constitution of India, after taking note of the various earlier decisions and the relevant provisions of law, has held that a person detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988 by way of order of preventive detention has a right to make representation to the officer empowered to deal with such representation and such officer is obliged to consider the said representation as expeditiously as possible and failure on his part to do so would result in denial of the right conferred on the person detained to make representation against the order of detention. The Apex Court has also

held that such a right to make representation necessarily implies that the person detained must be informed of his right to make a representation to the authority that has made the order of detention at the time when he is served with the grounds of detention so as to enable him to make such a representation and failure to do so would result in denial of the right of the person detained to make a representation. Undoubtedly, the rule is that though ignorance of law is no excuse and every one is presumed to know the law, once the liberty of a person is sought to be curtailed by way of preventive detention, certainly the constitutional right guaranteed to the person so detained, shall be made available to him effectively. In order that the fundamental right of the person so detained can be effectively exercised by him, it would be necessary to apprise him of the availability of such right to him. Undoubtedly, the provisions of law comprised under Article 22(5) nowhere prescribes any mode or method of communication of such right to the person detained. However, bearing in mind that it is the fundamental right of every person he cannot be denied of his liberty without justifiable cause and by way of procedure known to and established by law, and therefore the intimation of such right to the detenu cannot assume an empty formality. Certainly, therefore, it is an obligation of the detaining authority to

apprise the detenu of his right to make representation. At the same time, what method to be adopted for conveying the said right would depend upon the facts of each case and there cannot be any strait-jacket formula to be adopted for the same. In fact, this has been elaborately explained by the Apex Court in its latest judgment in the matter of **Prabha Shankar Dubey v. State of Madhya Pradesh**, reported in 2003 AIR SCW 6592.

6. In **Prabha Shankar Dubey's** case (supra), the Apex Court was dealing with a matter in relation to the requirements of compliance of the provision of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. It was the grievance on behalf of Prabha Shankar Dubey that merely asking the accused as to whether he would like to be searched by a Gazetted Officer or a Magistrate was not sufficient compliance of the requirements embodied in Section 50 of the NDPS Act and by merely asking the accused what is to be done, would amount to seeking their opinion and not making them aware of their right. Relying on the decision of the Constitutional Bench of the Apex Court in **State of Punjab v. Baldev Singh**, reported in 1999 AIR SCW 2494, it was sought to be argued that the sanctity that is attached to the compliance of the requirements has to be culled out from the references made to the principles under the preventive detention laws. Dealing with the

contentions sought to be raised and considering that no specific form is prescribed for conveying the information required to be given under Section 50 of the NDPS Act, it was held that:

"What is necessary is that the accused (suspect) should be made aware of the existence of his right to be searched in presence of one of the officers named in the section itself. Since no specific mode or manner is prescribed or intended, the Court has to see the substance and not the form of intimation. Whether the requirements of S.50 have been met is a question which is to be decided on the facts of each case and there cannot be any sweeping generalization and/or strait-jacket formula."

It was further held that:-

"It is only a procedure required to protect the rights of an accused (suspect) being made aware of the existence of his right to be searched if so required by him before any of the

specified officers. The object seems to be to ensure that at a later stage the accused (suspect) does not take a plea that the articles were planted on him or that those were not recovered from him. To put it differently, fair play and transparency in the process of search has been given the primacy."

7. As rightly pointed out by the learned A.P.P., the Apex Court while dealing with the provisions of Article 22(5) of the Constitution in **Wasi Uddin Ahmed's** case (supra) held that:-

"It is expected of a detaining authority while serving an order of detention, as a rule, to mention in the grounds of detention, that the detenu has a right to make a representation against the order of detention and also a right to be heard by the Advisory Board."

Further, dealing with the expression "and shall afford" in Article 22(5) of the Constitution, it was observed that the said expression has a positive content in the matter of personal liberty and therefore it was held that:-

"The law insists upon the literal performance of a procedural requirement. The need for observance of procedural safeguards, particularly in cases of deprivation of life and liberty is of prime importance to the body politic. It is, therefore, imperative that the detaining authority must "apprise" a detenu of his constitutional right under Art. 22(5) to make a representation against the order of detention and of his right to be heard before the Advisory Board. The right of the detenu to make a representation under Art. 22(5) would be, in many cases, of little avail if the detenu is not 'informed' of this right. The failure to comply with this requirement, however, does not have the effect of vitiating the impugned order of detention or render the continued detention of the detenu illegal in this case for the reason that the detenu is an enlightened person and has been in active politics and was, therefore, fully cognisant of his right to make a representation under Art.

22(5) of the Constitution and under Section S.8 of the Act. In fact, the detenu appeared before the Advisory Board and filed a representation against the order of detention and was also personally heard by the Advisory Board."

8. Plain reading of the decision of the Apex Court in Wasi Uddin Ahmed's case, therefore, would disclose that what is important to safeguard the rights of the detenu under Article 22(5) of the Constitution in relation to the representation which he is entitled to make against the order of detention is to apprise him of his entitlement to make such a representation. The said Article itself nowhere provides as to how to apprise the detenu of such entitlement. Undoubtedly, it is not an empty formality but a matter relating to the question of personal liberty. Being so, due care and caution should be taken by the detaining authority in apprising the detenu of his entitlement to make a representation against the detention order. Bearing this in mind, merely because in the Marathi translation the word "adhikar" (in Marathi) is missing, that itself cannot lead to the conclusion about the failure to comply with the obligation of the detaining authority to apprise the detenu of his entitlement to make representation. In substance, what has been conveyed that has to be seen.

If in substance the grounds disclose conveyance of the entitlement of the detenu to him, then it would amount to sufficient compliance of the mandate of Article 22(5) of the Constitution. For that purpose, it may not require literal translation of the English version. In fact, it will depend upon the facts of each case. Besides, in a case where the detenu avails the right of entitlement without much delay, certainly it cannot be said that there has been failure to comply with its obligation on the part detaining authority in apprising the detenu of his right to make the representation. In Wasi Uddin Ahmed's case, in fact, there was total failure on the part of the detaining authority to mention in the grounds of detention that the detenu had a right to make representation against the order of detention, as also the right of being heard before the Advisory Board, yet the Apex Court held that failure in that regard did not render the order of detention or the continued detention to be illegal as the detenu had availed of such a right of representation by making representation to the concerned authority. In the case in hand, apart from the absence of the word "adhikar" (in Marathi), there is sufficient compliance regarding intimation in English as well as in Marathi to the detenu about his entitlement to make representation to the authorities, including the detaining authority and the State Government and that he would be heard, if so

desired, by the Advisory Board. Undoubtedly, in the English version the word "right" has been specifically used. It is also undisputed fact that the detenu has studied upto VIIth standard in Marathi. Undoubtedly, on that count it is sought to be contended that the detenu is not well-versed with English language but at the same time he has stated that he knows Marathi. Considering that there is substantial compliance about the intimation of his entitlement to make representation, also in the Marathi translation, coupled with the fact that the petitioner had in fact made representation on 8-11-2004 through his Advocate, clearly reveal that there was no prejudice caused to the petitioner. That apart, mere delay on the part of the petitioner himself in making the representation cannot enure to his benefit to make grievance about absence of the word "adhikar" in the Marathi translation in relation to intimation of his entitlement to make representation.

9. The Division Bench of this Court, to which one of us (Khandeparkar, J.) was a party, in the matter of **Amar alias Amarsingh Gulabsingh Rathod** (supra), while dealing with similar issue, had held that considering the fact that effective representation to the detaining authority was submitted by the petitioner, mere failure on the part of the detaining authority to furnish the translation would not render the order of detention

illegal.

10. The decision in **Ramchandra alias Ramyadada Gopinath Pawar's** case (supra) was in the peculiar facts of the case where in the Marathi translation, instead of apprising the detenu about his entitlement to make representation, merely informed him that he was given opportunity to make representation, if he so desired. Obviously, that could not amount to appraisal of the right to the detenu about his entitlement to make representation. That is not the case in hand. The Marathi translation clearly specified that he could make representation to the State Government. Besides, the Division Bench dealing with the matter in Ramyadada's case had no benefit of the decision of the Apex Court in Prabha Shankar Dubey's case nor the decision in Wasi Uddin Ahmed's case was brought to its notice. Being so, the said decision in Ramyadada's case is of no help to the petitioner in the case in hand.

11. The decision in **K. Mohanan's** case (supra) was also in the peculiar facts of the case. Therein the mandatory requirements of Section 50 of the NDPS Act were not complied with. The facts, as narrated in para 3 of the decision, disclose that the Sub-Inspector of Police had intercepted K. Mohanan at 4:15 p.m. on 24-9-1990 and had conducted a search on his person and

had recovered a packet from the folder of his loincloth and it had contained four small packets of brown sugar, the total of which weighed 4150 mg. Further, the evidence recorded in the said case disclosed that the accused was asked as to whether he was required to be produced before the Gazetted Officer or the Magistrate for the purpose of search. In other words, he was not informed about his entitlement of the presence of a Magistrate or a Gazetted Officer at the time of search but merely the opinion of the accused was sought as to whether the accused was required to be produced before the Gazetted Officer or a Magistrate for the purpose of search. Obviously, there was no compliance of Section 50. Similarly, if merely the opinion of the detenu is sought as to whether he wants to make representation or not, certainly it would not amount to compliance of the provisions of Article 22(5) of the Constitution. What is required is to apprise the detenu of his entitlement and not to be asked for his opinion. Certainly, neither the English version nor the Marathi translation of the grounds served upon the detenu, in the case in hand, called for any opinion of the detenu as to whether he would like to make representation. On the contrary, he was informed about his entitlement to make such representation. Being so, the decision in K. Mohanan's case is also of no help to the petitioner.

12. The decision in **Smt. Leena Lawrence Lewis's** case (supra) is also of no help as therein it was held that the detenu was not apprised of his entitlement to make representation to the State Government. Undoubtedly, such a finding was arrived at on account of the words "the application" in place of "the representation". Obviously, the decision was delivered in the peculiar facts of the case. Besides, the correctness of the said decision is doubtful in view of the law being made very clear as regards the procedure to be followed in apprising the detenu of his entitlement to make representation, by the Apex Court in Wasi Uddin Ahmed's case as well as in Prabha Shankar Dubey's case. Undoubtedly, attention of the Division Bench was not drawn to the decision in Wasi Uddin Ahmed's case and it had no advantage of having before it the decision in Prabha Shankar Dubey's case as the Apex Court's decision in Prabha Shankar Dubey's case was delivered on 2-12-2003 whereas the decision in Smt. Leena Lawrence Lewis's case was delivered on 20-2-2003.

13. For the reasons stated above, therefore, the first ground of challenge fails.

14. The second ground of challenge relates to the consideration of the cases against the detenu which had resulted in acquittal and cases wherein the

investigation was still pending for the purpose of arriving at the satisfaction for clamping the detention order on the petitioner. In that regard, placing reliance in the decision of the Apex Court in the matter of **Abdul Razak Nannekhan Pathan v. Police Commissioner, Ahmedabad and another**, reported in (1989) 4 SCC 43, it is sought to be contended on behalf of the petitioner that it was illegal on the part of the detaining authority to take into consideration the cases wherein the detenu had already been acquitted as well as the cases wherein the investigation machinery had not even filed the chargesheet for the purpose of arriving at the satisfaction about the need of preventive detention being clamped upon the petitioner. On the other hand, the learned A.P.P. submitted that reference to the cases wherein the detenu was acquitted or the investigation was pending was by way of preamble and did not form the grounds for the satisfaction of the authority regarding the need for detention of the petitioner. According to the learned A.P.P., such a preamble is always permissible and in that regard attention is drawn to the decision of the Apex Court in **Dhananjay Das v. District Magistrate and another**, reported in AIR 1982 SC 1315. The said contention is sought to be countered by placing reliance in an unreported decision in the matter of **Unnikrishnan @ Pillu Gopikrishnan Nair v. Shri M.N. Singh and others**

{Criminal Writ Petition No.1530 of 2001} delivered on 25-2-2002.

15. In **Abdul Razak Nannekhan Pathan's** case (supra), the detention order was held to be bad in law as the criminal cases based on which the satisfaction for need of passing the detention order was arrived at were confined to certain individuals and there was nothing to show that the petitioner was a member of a gang which was engaged in criminal activities systematically in a particular locality which created panic and a sense of insecurity amongst the residents of that particular area on account of which the impugned order was made. It was further observed that the alleged activities of the detenu did not affect adversely or did not affect the even tempo of life of the community and they merely related to the law and order problem and did not affect the public at large nor did cause a threat to the maintenance of public order. It was in those circumstances, reference to those cases was said to be not sufficient to justify the detention order. It was in totally different circumstances that the order of detention was held to be bad and not because of reference to the cases in the preamble. Obviously therefore, the grounds in support of the order can contain the preamble to the grounds and each case will have to be ascertained by perusal of the grounds to find

out whether any portion thereof is in the form of preamble.

16. The learned Advocate for the petitioner, however, referring to the contents of the last sentence in the first para of the grounds wherein it is stated that "Copies of the documents placed before me are enclosed, except the names and identifying particulars of the witnesses/victims in connection with the grounds mentioned in paragraph 4(A) to (G) are not furnished to you in the public interest and for which I claim privilege.", sought to contend that clear reference to paras 4(A) to (G) in the said sentence discloses that whatever that has been stated in paragraph 4 sub-paragraphs (A) to (G) constitute the grounds of detention. He has further submitted that Clause (A) of para 4 relates to a case wherein the petitioner has already been acquitted and considering the same and applying the law laid down by the Apex Court in Abdul Razak Nannekhan Pathan's case, the order of detention is to be held as bad. The learned A.P.P., on the other hand, has drawn our attention to the passage which follows the Clause (C) and wherein it is recorded that "Following incidents show that inspite of above legal and preventive action you continued to indulge in criminal activities". Referring to Clauses (D) to (G) which are recorded after the above quoted passage, it is

sought to be argued by the learned A.P.P. that those paragraphs clearly refer to the pending cases and the cases wherein the investigation was in progress and that the same constitute the grounds for the detention order. According to the learned A.P.P., the case wherein the petitioner was acquitted was not considered as a ground but it was merely referred in the preamble and since inspite of acquittal and preventive action taken under Section 10 of the Code of Criminal Procedure, the criminal activities of the petitioner had still continued, that the impugned order came to be issued.

17. It is to be noted that, as already observed above, the decision of the Apex Court in Abdul Razak Nannekhan Pathan's case, the detention was found to be on account of the cases in which the detenu was involved were relating to law and order and not in relation to maintenance of public order which was essential for passing an order under Section 3(1) r/w Section 2(c) of the Gujarat Prevention of Anti-Social Activities Act, 1985. It was also noted by the Apex Court therein that out of the seven criminal cases which were the basis for the detention order, two of the cases were of the year 1985-86 which were not proximate to the date of the order of detention and were stale as the detention order was passed in October, 1988. Apparently, the said decision was in peculiar facts of the case.

18. The Division Bench in **Unnikrishnan @ Pillu's** case (supra), undoubtedly referring to the phraseology in para 1 of the grounds had rejected the contention that some part of the grounds for detention order could be treated as the preamble. Undoubtedly, it was on account of specific statement that the contents formed the grounds for passing of the order. Certainly, factually the contention of the A.P.P. in the said case appeared to be contrary to the records. That is not the case in hand. Being so, the said decision is of no help to the petitioner in the case in hand. The said passage immediately after Clause (C) in the grounds of detention reveals that the portion prior to the said para i.e. the contents of Clauses (A), (B) and (C) of para 4 do not form part of the grounds but they form the part of the preamble. Attention was also drawn to the last sentence of the first para. In fact, the proper reading of the said sentence would disclose that reference to para 4 therein has been made in relation to the documents which were supplied to the detenu and the non-disclosure of the name and identity of the witnesses and the victims was in public interest and in relation to which, the detaining authority had claimed privilege. Bare reading of Clauses (A), (B) and (C) nowhere discloses that the name and identity of the complainant has been concealed. On the contrary, they clearly

disclose the name of the complainant. Being so, no privilege is claimed in respect of the names of the persons referred to in those paras. Therefore, the last sentence in the first para, by no stretch of imagination, can be said to be relating to Clauses (A), (B) and (C) of para 4.

19. For the reasons stated above, therefore, the challenge to the detention order on the second ground also fails.

20. The third ground of challenge relates to non-application of mind on account of failure to consider that the detenu was already on bail in relation to the cases pending against him. According to the learned Advocate for the petitioner, the order and the grounds in support thereof reveal that the detenu was arrested in relation to the chargesheet filed and in the cases pending against him but the detaining authority was completely unaware that the detenu was not in custody and that he was a free person having been released on bail. This, according to the learned Advocate, shows non-application of mind by the detaining authority and the same renders the impugned order to be bad in law. Reliance is placed in the decision in the matter of **Anant Sakharam Raut v. State of Maharashtra and another**, reported in AIR 1987 SC 137 and an

unreported decision of the Division Bench of this Court in the matter of **Ali Miya Shaikh v. The Commissioner of Police, Greater Bombay & others** {Criminal Writ Petition No.1193 of 1986} delivered on 24-3-1987. The learned A.P.P., on the other hand, has submitted that mere reference to the sections under which the cases were registered disclose that they were all bailable offences except the one wherein the detenu had been already acquitted and the said fact was clearly revealed from the grounds in support of the detention order. Besides, the fact that the detenu was not in custody was known to the detaining authority and that is clear from the continued criminal activities of the detenu during the period after his release on bail and which are referred to in the grounds. Besides, the fact that the detenu was on bail is not relevant for the purpose of the detention order.

21. Undoubtedly, the narration of the incidents and reference to the Sections under which the cases were registered apparently disclose, as rightly submitted by the learned A.P.P., that they were bailable offences. In case of non-bailable offence, the petitioner was already acquitted. This is revealed from the grounds themselves. This apparently discloses that the detaining authority was fully aware that the detenu was not in custody at the relevant time.

22. The affidavit in-reply filed by the detaining authority clearly discloses that he was fully aware that the petitioner was continuously engaging in prejudicial activities one after another and after having subjectively satisfied that the petitioner was likely to indulge in similar prejudicial activities in future, he had issued the order of detention. He has further stated in the affidavit that all the offences, except the one mentioned in para 4(A) of the grounds of detention were bailable offences in respect of which bail is granted as of right and since the petitioner was not in custody at the time of issuance of the order of detention, it was not necessary for him to show his awareness about the same in the grounds of detention. We have no hesitation in accepting the contention on behalf of the detaining authority in that regard.

23. The Apex Court in **Devi Lal Mahto v. State of Bihar and another**, reported in AIR 1982 SC 1548, while taking stock of its earlier decisions in the matters of **Rameshwar Shaw v. District Magistrate, Burdwan** {AIR 1964 SC 334}, **Vijay Kumar v. State of J. & K.** {AIR 1982 SC 1023}, **Biru Mahato v. District Magistrate, Dhanbad** {AIR 1982 SC 1539} and **M. Satyanarayana v. State of Andhra Pradesh** {AIR 1982 SC 1543}, held that:-

"one can envisage a hypothetical case in which a preventive detention order may have to be made against a person already deprived of his personal liberty by being confined or detained in jail but in such a situation the detaining authority must show awareness of this fact that the person against whom the detention order is proposed to be made is already in jail and is incapable of acting in a manner prejudicial to the maintenance of public order and yet for the reasons which may appeal to the District Magistrate on which his subjective satisfaction is grounded a preventive detention order is required to be made."

It was further held that:-

"this awareness must appear either in the order or in the affidavit justifying the impugned detention order when challenged."

Obviously therefore, the awareness about the fact that the detenu was already on bail need not necessarily be

disclosed in the detention order or the grounds in support thereof but it can also be explained in the affidavit once a challenge is thrown on that ground to the order of detention. As already observed above, the affidavit in-reply clearly gives a satisfactory explanation in that regard.

24. The Apex Court in **Union of India v. Amrit Lal Manchanda and another**, reported in (2004) 3 SCC 75, to which attention is drawn by the learned A.P.P., has clearly enumerated the nature and the object behind the preventive detention and the distinction between the preventive detention and the criminal proceedings. It was held thus:-

"Preventive detention is an anticipatory measure and does not relate to an offence committed by him. They are not parallel proceedings. The object of the law of preventive detention is not punitive but only preventive. It is resorted to when the executive is convinced that such detention is necessary in order to prevent the person detained from acting in a manner prejudicial to certain objects which are specified by the law concerned. The

action of the executive in detaining a person being only precautionary, normally the matter has necessarily to be left to the discretion of the executive authority. It is not practicable to lay down objective rules of conduct in an exhaustive manner, the failure to conform to which should lead to detention. The satisfaction of the detaining authority, therefore, is considered to be of primary importance, with great latitude in the exercise of its discretion. The detaining authority may act on any material and on any information that it may have before it. Such material and information may merely afford basis for a sufficiently strong suspicion to take action, but may not satisfy the tests of legal proof on which alone a conviction for offence will be tenable. The compulsions of the primordial need to maintain order in society without which the enjoyment of all rights, including the right to personal liberty of citizens would lose all their meanings, provide the justification for the laws of preventive

detention. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State or corroding financial base provides grounds for satisfaction for a reasonable prognostication of possible future manifestations of similar propensities on the part of the offender. This jurisdiction has at times been even called a jurisdiction of suspicion. The compulsions of the very preservation of the values of freedom of democratic society and of social order might compel a curtailment of individual liberty."

At the same time, the Apex Court has warned that:-

"Cases involving challenges to orders of detention before and after execution of the order stand on different footings. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of

courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context."

Similar is the decision of the Apex Court in Prabha Shankar Dubey's case wherein it was held that "A line or a word in a judgment cannot be read in isolation or as if interpreting a statutory provision, to impute a different meaning to the observations".

25. It is also well-settled law, as submitted by the learned A.P.P., that even withdrawal of the prosecution would not deter the detaining authority from clamping the detention order in case it is subjectively satisfied for the need thereof. The Full Bench of this Court in **Subhangi Tukaram Sawant v. R.H. Mendonca and others**, reported in 2001 (3) Mh.L.J. 580, relying upon the decisions of the Apex Court in **Debu Ghose v. State of West Bengal** {AIR 1972 SC 530}, **Sahib Singh Dugal v. Union of India** {AIR 1966 SC 340}, **M.S. Khan v. C.C. Bose** {AIR 1972 SC 1670} and **Smt. Hemlata Kantilal Shah v. State of Maharashtra** {(1981) 4 SCC 647} has clearly held that preventive detention order could be passed even without a successful prosecution.

26. The Apex Court in **Anant Sakharam Raut's** case

(supra), undoubtedly, has held that there was absolutely no mention in the order about the fact that the detenu was an undertrial prisoner, that he was arrested in connection with three cases, that the applications for bail were pending and that he was released on three successive dates in three cases and the same in fact indicate total non-application of mind on the part of the detaining authority while passing the order of detention. As already observed above, in the case in hand, the grounds disclose registration of the complaints, pendency of the cases and continuation of criminal activities on the part of the detenu which clearly reveal that the detaining authority has taken into consideration the fact of pendency of the cases as well as the fact that the petitioner was not in custody. The Division Bench in **Ali Miya Shaikh's** case (supra) has undoubtedly held that:

"Neither in the grounds of detention nor in any of the documents which were placed before the detaining authority is there any mention that the detenu was released on bail after he was arrested on 22nd May 1986 and before the order of detention was passed. No explanation has been given by the detaining authority either in the grounds of

detention or in the affidavit in reply as to why he thought it necessary to put the detenu under preventive detention when the detenu was already in custody in connection with the three cases which have been made the grounds of detention."

It is well-settled that the prosecution or absence of it is no bar to order preventive detention. What is required is that the detaining authority must be satisfied of the necessity to detain a particular offender in order to prevent him from repeating the offences. If the materials placed before the detaining authority are sufficient to arrive at such satisfaction, mere non-recording of the fact that the detenu was released on bail in one or more criminal cases filed against him, that would not invalidate the opinion formed by the detaining authority regarding need of detention of such person to disable him to repeat offences. The detaining authority is entitled to take into account all the relevant materials placed before it as also the past conduct and antecedent history of the person and based on all such materials subjectively arrive at the satisfaction as to whether or not the offender is required to be detained in preventive custody. The law in that regard being well-settled,

mere failure to record that the detenu was on bail and therefore a free person, which is otherwise revealed from the contents of the grounds, would not disclose non-application of mind by the detaining authority. Thus the third ground of challenge also fails.

27. The fourth ground of challenge relates to some of the documents being illegible and therefore opportunity for effective representation being denied to the petitioner. It is the contention of the petitioner that the copies of the following documents furnished to the detenu were illegible:

- "1. Judgment in S.C. No.116 of 2002
2. Statement of Sripad D. Joshi
3. Statement of Vishal Vishnu Bhore
4. F.I.R. in C.R. No.I-319/03 and
I-81/04
5. Statement of Yogesh Pantalal
6. Statement of Chetan Shivaji G."

On the other hand, the learned A.P.P. has submitted that as far as the documents in the above list at serial Nos.1 to 3 are concerned, the same were not relied upon for issuance of the detention order. As regards the other documents, it is the contention of the learned A.P.P. that the copies furnished to the petitioner were

quite legible and the petitioner had made effective representation and in no way he was prejudiced on account of any of the alleged illegible documents. It is further contention that in any case, the petitioner was furnished with the copies which were demanded by the petitioner through the Jailor. In that connection, reliance is sought to be placed in **Dhananjoy Das's** case (supra) while contending that only the documents which are relied upon are required to be essentially furnished to the detenu to enable him to make effective representation. Simultaneously, attention is also drawn to the decision of the Apex Court in **Mst. L.M.S. Ummu Saleema v. B.B. Gujaral and another**, reported in AIR 1981 SC 1191 contending that every failure to furnish copy of the document cannot be fatal and cannot render the order of detention to be illegal.

28. In **Manjit Singh Grewal alias Gogi v. Union of India and others**, reported in 1990 (Supp) SCC 59, the Apex Court in the peculiar facts of the case had ordered that since undisputedly the copies of the documents supplied to the detenu were illegible, the safeguards provided by the Constitution of India was not followed. The Apex Court in the said case has passed the said order in the undisputed facts of the case wherein the documents supplied to the detenu were illegible, and obviously it had resulted in great prejudice to the

detenu. Apart from the said point, no other point was discussed in the matter and, therefore, it can be of no help in the case in hand.

29. In **Ramchandra A. Kamat v. Union of India and others**, reported in AIR 1980 SC 765, the Apex Court has held that the right to make representation is a fundamental right and if there is undue delay in furnishing the statements and the documents referred to in the grounds of detention, the right to make an effective representation get affected. It was further held that when the grounds of detention are served upon the detenu, he is entitled to ask for the copies of the statements and the documents referred to in the grounds of detention to enable him to make an effective representation and when such a request is made for the documents by the detenu, they should be supplied to him expeditiously. However, what is the reasonable expedition would depend upon the facts of each case. It was further held that when the Act contemplates furnishing of the grounds of detention ordinarily within five days of the order of detention, the intention is clear that the statements and documents which are referred to in the grounds of detention and which are required by the detenu and are expected to be in possession of the detaining authority should be furnished with reasonable expedition. In the said case

the detenu was arrested on 5-9-1979 and was served with the grounds of detention on the same day. The Advocate for the detenu under the letter dated 7-9-1979 had requested to furnish the copies of several statements and documents referred to by the detaining authority in the grounds for detention, as the detenu was desirous of making representation. By reply to the said letter, he was informed by the Deputy Secretary to the Government of India to contact the Deputy Director of the Directorate of Enforcement, Bombay, who it was stated, had been suitably advised regarding supply of copies of statements and documents, relied upon in the detention order. Though the letter stated that the Deputy Director was suitably advised in the matter, nothing further was done by the Deputy Director of the Directorate of Enforcement, Bombay. On 14-9-1979 the Advocate having not received any communication, wrote to the Deputy Director requesting him to supply him the copies. The Deputy Director by his communication dated 22-9-1979 requested the Advocate to see the Deputy Director on 24-9-1979 at 14:30 hours to take inspection of the documents. The Advocate was not satisfied and insisted for supply of the copies of the documents and ultimately the copies were supplied on three different dates, namely, on 26-9-1979, 28-9-1979 and 29-9-1979. The representation was made by the detenu on 5-10-1979. In those set of facts and circumstances, it was held

that the detaining authority had failed to act with reasonable expedition in furnishing the copies of the statements and the documents referred to in the grounds of detention and, therefore, the detention was not in accordance with the procedure contemplated under the law. Apparently, the said decision was in the facts of the said case and does not apply to the facts of the present case which are totally different from those of the case of **Ramchandra A. Kamat** (supra).

30. The unreported decision of the Division Bench in the case of **Shri Aslam Amin Shaikh v. Shri M.N. Singh & others** {Criminal Writ Petition No.155 of 2003} delivered on 20-9-2003 is also of no help to the petitioner as apparently in the said case the detenu was asked to adopt cumbersome procedure for approaching the Commissioner of Police and by doing so, in fact, the State Government had disowned its responsibility which otherwise rests upon its shoulder after the order of detention is approved by it. That is not the case in the matter in hand.

31. In the case in hand, apart from submitting that the copies of the above referred documents were illegible, the learned Advocate for the petitioner has not been able to point out whether the illegibility of the documents had in any way affected or caused prejudice to

the petitioner in making an effective representation. On the contrary, the petitioner did make representation against the detention order and it is a matter of record. The Apex Court in **Mst. L.M.S. Ummu Saleema's** case (supra) has clearly held that:-

"The Constitutional requirement of Art. 22(5) was stated insistence that basic facts and particulars which influenced the detaining authority in arriving at the requisite satisfaction leading to the making of the order of detention must be communicated to the detenu so that the detenu may have an opportunity of making an effective representation against the order of detention. It is, therefore, clear that every failure to furnish copy of a document to which reference is made in the grounds of detention is not an infringement of Art. 22(5), a fatal to the order of detention. It is only failure to furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenu to make an effective representation, that amounts to a violation of the

Fundamental Rights guaranteed by Art. 22(5). In our view it is unnecessary to furnish copies of documents to which casual or passing reference may be made in the course of narration of facts and which are not relied upon by the detaining authority in making the order of detention."

Being so, the need of furnishing the documents is essentially to enable the detenu to make an effective representation in exercise of his right under Article 22(5) of the Constitution. Once the records disclose that the petitioner was able to make an effective representation based on the copies of the documents served upon him along with the grounds of detention, unless the petitioner is able to make the case of prejudice on account of illegibility in any one or more copies of the documents served upon him, there can hardly be a case for interference in the order of detention. Certainly it would have been a different story if the detenu was not able to make an effective representation. It is to be noted that while dealing with the detention matters in exercise of powers under Article 226, the High Court does not sit in appeal on the orders of preventive detention. The Apex Court in **Smt. Hemlata Kantilal Shah v. State of Maharashtra and**

another, reported in (1981) 4 SCC 647, had ruled that:-

"The courts have only to see whether the formalities enjoined by Article 22(5) have been complied with by the detaining authority and if so, the courts cannot examine the materials before it and find that the detaining authority should not have been satisfied on the materials before it and detained the detenu under the Preventive Detention Act."

As already seen above, the compliance of the mandate of Article 22(5) has to be in a meaningful manner, at the same time by adopting a reasonable procedure. Once it is clear that the petitioner was able to make an effective representation on the basis of all the materials supplied to him, it is too late in the day for the petitioner to seek interference of this Court on the ground that the some pages of the materials supplied to the detenu were either illegible or were not properly readable. Irrespective of the alleged situation, the petitioner was able to read the documents and make a representation, apart from the fact that some of the documents were not at all relied upon by the detaining authority for the purpose of passing the detention order. This ground of challenge too, therefore, fails.

32. The next ground of challenge relates to failure on the part of the detaining authority to furnish the true and faithful translation of the documents. It is the case of the petitioner that the Marathi translation of the grounds of detention is not the true and faithful translation and consequently the petitioner is deprived of the opportunity of making an effective representation. The contention appears to be that the expression like subjective satisfaction and public order have been wrongly translated in Marathi and consequently the petitioner could not make an effective representation. In fact the contention about prejudice to the petitioner in the matter of making an effective representation on account of the alleged lapse on the part of the detaining authority in furnishing the true and faithful translation is a mere submission without being made good with reference to the materials on record. Undoubtedly, the petitioner has made an effective representation pursuant to service of the detention order along with the grounds of detention and the copies of the other documents. In what way the prejudice was caused or suffered on account of the alleged incorrect translation has not been disclosed. Be it as it may, proper reading of the Marathi version of the grounds clearly conveys the meaning which was required to be conveyed to the petitioner in relation to

the grounds recorded in English. It was necessary for the petitioner to demonstrate how the Marathi expressions used in the translated copy do not reveal the correct meaning of the English version of the grounds. No such attempt has been made either in the petition or even in the course of arguments. Being so, the ground in this regard is absolutely devoid of substance. Besides, as rightly submitted by the learned A.P.P., what is relevant is that the provisions of Article 22(5) of the Constitution in relation to the entitlement of the detenu to make effective representation is being duly complied with and on service of the order with the enclosures, the petitioner is shown to have made an effective representation. Since the petitioner is unable to point out in what manner the alleged difference in the phraseology used in the translated copy has affected his right to make representation, no conclusion can be drawn about the failure on the part of the detaining authority to comply with the provisions of Article 22(5).

33. The next ground of challenge relates to the improper verification in relation to the in-camera statements. It is the contention of the learned Advocate for the petitioner that three in-camera statements which are referred to in the grounds of detention and relied upon by the detaining authority

were not properly verified, as required under the law. According to the learned Advocate for the petitioner, the verification should disclose proper satisfaction of the authority regarding the genuineness of the statement and that should be apparent from the verification recorded by the officer and in the absence thereof, such a statement cannot be said to be an authentic statement. Reliance is placed in that regard in the decision of **Shri Vidyadhar H. Varma v. Shri R.H. Mendonca & Ors.**, reported in 2000 All M.R. (Cri.) 773. The learned A.P.P., on the other hand, drawing attention to the verification recorded by the officers and the affidavit filed by the Assistant Commissioner of Police, who had recorded the verification, has submitted that the records clearly disclose that the witnesses were personally interrogated by the officer and he was satisfied about the identity of the witnesses as well as the truthfulness of the incidents narrated and the fear expressed by them and thereupon he had made the necessary endorsement.

34. Perusal of those statements clearly disclose a clear endorsement by the officer about the verification being done by him personally in relation to the deponents as well as the contents of the statements.

35. The Division Bench of this Court in **Shri Vidyadhar**

Varma's case (supra) had undoubtedly refused to rely upon the in-camera statements in the said case on the ground that the veracity and genuineness thereof was not properly ensured by counter checking by a superior authority through an independent confidential departmental enquiry. At the same time, it is to be noted that in the said case the subjective satisfaction of the detaining authority was solely based on the in-camera statements and there was no other material relied upon in support of the order of detention, and in those facts the Division Bench had refused to rely upon the in-camera statements in the absence of proper steps being taken to ensure the veracity and genuineness of those statements. Besides, the Division Bench had clearly observed that "we should not be misunderstood that we are suggesting a machinery or procedure to ensure that in-camera statements are generally made." Obviously therefore, the Division Bench has not laid down any law as regards the procedure to be followed for the purpose of ensuring the veracity or the genuineness of the in-camera statements. Once the in-camera statement apparently discloses proper verification regarding the truthfulness of such statement and the identity of the person to the satisfaction of the officer verifying the statement, certainly no fault can be found with the verification and therefore the challenge on the ground of defective verification does

not survive.

36. Feeble attempt is made to challenge the detention order also on the ground that the alleged activities of the petitioner do not disclose disturbance of public order and at the most they may relate to the law and order problems and therefore preventive detention under the MPDA Act is neither justified nor warranted. The contention is sought to be countered stating that the records apparently disclose the petitioner having indulged in the offences punishable under Chapters XVI and XVII and that the offences were committed without any previous enmity or animosity, for the purpose of creating terror in the locality and establishing his supremacy as well as to achieve his purpose of extorting money and that the activities of the petitioner of assaulting and threatening with weapons and extorting money in broad day light in busy locality clearly amounts to breach of the public order and therefore the application of the provisions of the MPDA Act was thoroughly justified. The learned A.P.P. is justified in submitting that it is the potentiality in totality of the activities on the part of the detenu that has to be considered for the satisfaction regarding the necessity to apply the preventive law. The activities of the detenu which have been taken into consideration while arriving at the subjective satisfaction include abusing

and threatening, with the sword in the hand, to the people and the shopkeepers in the locality to deter them from filing complaints against him, acts of extortion of money under the threats of knife in the broad day light as well as intimidating and assaulting the traders in the locality. Three in-camera statements reveal in detail about such activities on the part of the detenu.

37. Indeed in **Debu Ghose's** case (supra), it was clearly held that an order of detention can be passed even if a prosecution was launched against the detenu but was withdrawn before the order was made. It was also ruled therein that non-mentioning of the name of one of the detenus and the names of his associates in the grounds would not be a defect sufficient to render the order of detention to be illegal when sufficient particulars regarding the time and place of occurrence and the actual acts committed by the detenu are disclosed in the grounds, which could enable the detenu to make an effective representation. The learned A.P.P. has also drawn attention to Section 5A of the MPDA Act which clearly empowers the authorities to segregate the grounds and justify the order on some or only on one ground if it cannot be justified on other grounds.

38. The unreported decision of the Division Bench in **Vijay Shrikrishna Padwal v. Union of India and others**

{Criminal Writ Petition No.915 of 1989} delivered on 26-10-1989 was to the effect that in the grounds of detention which were served upon the detenu it was mentioned by the detaining authority that particular documents were referred and relied upon, and at the same time, it was observed in paragraph 3 of the grounds of detention that the copies of the statements and the documents placed before the detaining authority were mentioned in the list accompanying the grounds of detention. From the said contents of the grounds for detention, the Division Bench had concluded that those documents must have been placed before the detaining authority for the purpose of enabling him to formulate the grounds of detention and that he could not have formulated the grounds of detention unless he had referred to those documents and placed reliance upon the same. Obviously, the decision was in peculiar facts of the case and is of no help to the petitioner.

39. In **Safiya v. Government of Kerala and others**, reported in (2003) 7 SCC 46, the Apex Court has clearly held that in writ jurisdiction it is not required to decide whether the subjective satisfaction of the authority is justified or not in the facts and circumstances which were brought to the notice of the detaining authority. Suffice to ascertain that the detaining authority has considered all the relevant

aspects borne out from the records which were placed before it before issuing the detention order and after arriving at the subjective satisfaction as to the necessity of detaining the detenu by invoking the provisions of the statute relating to the preventive detention.

40. As no other ground of challenge is canvassed, for the reasons stated above, no fault can be found with the impugned detention order and, therefore, the petition fails and is hereby dismissed. The rule is discharged with no order as to costs.

(R.M.S.Khandeparkar, J.)

(P.V.Kakade, J.)